IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7959 OF 2006

Shri Bansi Dashrath Tapkir ...Petitioner

v/s

Shri Dnyandeo Waman Walke and ors. ...Respondents

Mr V.B. Tapkir for Petitioner.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 6TH JULY 2007.

P.C. :-

1. The petitioner is the original defendant No.1. Suit was filed by the original plaintiff - respondent No.1 claiming declaration that the plaintiff and defendant Nos.2, 3, 5 and 7 are joint owners of the suit property and that certain construction made by the defendant No.1 is unauthorised. An application for temporary injunction was made for removal of the construction by the defendant No.1 by making encroachment. That application was rejected by the Trial Court. The plaintiff filed appeal before the District Court against that order. In the appeal, it appears that the appellant filed an application for appointment of Commissioner for taking measurements of the land. The Court granted that application. An application for review was filed by the present defendants for review of the order appointing Commissioner. That application has been rejected by the Trial Court by the impugned order and that order is challenged in the petition. The Appeal Court has observed that the Court made an order of appointment of Commissioner because the Court wanted to prima facie satisfy itself about the encroachment made by the defendant No.1. It is nobody's case that the appeal Court does not have jurisdiction to appoint

Commissioner. Whether the Commissioner was necessary to be appointed or not is not necessary to be gone into by this Court. The report of the Commissioner as and when it is submitted, can also be objected to by the petitioner. The petitioner is not justified in challenging the order impugned. Petition has no substance. It is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary as true copy.

. Certified copy expedited.